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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,082	03/06/2002	Michael E. Cotto	006-241-300	8490

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EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 06/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092,082

Applicant(s)

COTTO, MICHAEL E.

Examiner

Raymond W. Addie

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 17, 33 are objected to because of the following informalities:

Claim 17 recites "rake according to claim 13, wherein the truncated end surfaces", should be --rake according to claim 15, wherein the truncated end surfaces--; since claim 13 lacks antecedent basis for the truncated end surfaces claimed.

Claim 33 recites "flexibly rigid polymer", should be --stiff but flexible polymer--, in order to be consistent with the specification.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 14, 18-20, 22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gibbs D23,660.

Gibbs discloses a rake comprising:

A handle (B') having a 1st and 2nd end.

A holder (B) secured to the 2nd end of the handle.

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An elongated, cylindrical rake head (A) secured in a fixed position in relation to the handle by the holder.

A plurality of tines (C) extending from the rake head (A).

Although Gibbs '660 does not disclose the angular relationship between the tines and the handle; Gibbs clearly discloses the tines (C) are provided with an inwardly angled portion (C⁴), ending in hooks (C') which as illustrated forms an angle of approximately 30-60 degrees, relative to the longitudinal axis of the handle. Therefore, it would be obvious, if not inherent to one of ordinary skill in the art, at the time the invention was made, that Gibbs contemplates disposing the tines at an angle of approximately 30-60 degrees, relative to the longitudinal axis of the handle.

In regards to Claims 18-20, 22 Gibbs clearly illustrates the holder (B) as having an arcuately curved surface, complementing and physically connected to, the cylindrical surface of the rake head, via at least one fastener (unnumbered) for securing the rake head to the holder. Gibbs, further illustrates cylindrical tines (C) extending through the rake head via a plurality of holes, disposed in the top and bottom of the rake head (20).

3. Claims 15-17, 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs '660 in view of Jensen, Jr. D 389,024.

Gibbs discloses essentially all that is claimed, to include providing a plurality of cylindrical tines in respective holes in the rake head (A) and securing said tines via a

plurality of removable fasteners. What Gibbs does not disclose is providing the tines with truncated ends. However, Jensen, Jr. '024 teaches a multi-use tool, having an adjustable handle and a plurality of tines, having truncated ends that can be disposed such that the end surface of the truncated tines form an angle in the range of ± 10 degrees, including parallel to the longitudinal axis of the adjustable handle and an angle from about 30-60 degrees with an axis of the tines. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the rake of Gibbs '660 with tines having truncated ends, in order to use the rake as a grading rake.

4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs '660 in view of Fuller '065.

Gibbs '660 discloses essentially all that is claimed as put forth with respect to claim 19 above, but does not disclose providing a plurality of fasteners for securing the tines to the rake head. However, Fuller '065 discloses a lawn broom having a plurality of tines (13) removably secured to a cylindrical rake head (10/11) by a plurality of removable fasteners (12). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the rake of Gibbs '660 with a plurality of removable fasteners, as taught by Fuller '065, in order to secure the tines to the rake head. See Fuller, Figs 1, 5.

5. Claims 23, 25, 26, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs '660 in view of Erickson # 3,838,474.

Gibbs '660 discloses essentially all that is claimed as put forth with respect to claim 19 above, but does not disclose providing nylon tines. However, Erickson teaches a carpet rake (10) having a plurality of nylon tines (17), having a diameter of approximately $\frac{1}{2}$ " which provide a "gentle firmness" to the material being raked. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the rake of Gibbs '660 with nylon tines having a $\frac{1}{2}$ " diameter, as taught by Erickson, in order to reduce wear and tear of the bristles. See Erickson, Abstract, Col. 2, Ins. 25-58.

6. Claims 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs '660 in view of Jensen, Jr. D 389,024 as applied to claim 28 above, and further in view of Erickson '474.

Gibbs '660 in view of Jensen, Jr. D 389,024 discloses essentially all that is claimed, as put forth with respect to claim 28 above, but does not disclose the use of nylon tines. However, Erickson teaches a carpet rake (10) having a plurality of nylon tines (17), having a diameter of approximately $\frac{1}{2}$ " and a length of 1", which provide a "gentle firmness" to the material being raked. Although Erickson does not disclose the range to which the tines are flexible; Erickson further discloses the tines are flexible and expected to withstand repeated deflection, without excessive wear and tear.

Considering the length of the tines, it would be obvious to one of ordinary skill in the art, that the tines should be able to be deflected at least $\frac{1}{2}$ their length, without excessive wear and tear, which in this case would be about $\frac{1}{2}$ " of deflection or flexure.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the rake of Gibbs '660 with nylon tines, as taught by Erickson, in order to reduce wear and tear of the bristles. See Erickson, Abstract, Col. 2, Ins. 25-58.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs '660 in view of Tansey # 4,063,407.

Gibbs discloses essentially all that is claimed, as put forth with respect to claim 13 above, but does not disclose the spacing of the tines. However, Tansey teaches it is desirable to provide a rake (10) with a plurality of tines (17) at a $\frac{1}{2}$ " spacing, as taught by Tansey, in order to maximize the raking efficiency of the rake.

8. Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fyffe et al. # D271,936 in view of Burrell # 4,173,835.

Farkas discloses a contoured rake for particulate matter, having cylindrical tines with truncated ends. Said tines forming an angle with the handle in the range of 30-60 degrees the truncated ends of the tines forming an angle between ± 10 degrees with the handle. Fyffe et al., does not teach how the grading rake is used.

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However, Burrell discloses a method of grading particulate matter comprising the steps of:

Pushing particulate matter with a grading rake.

Pulling the particulate matter with the grading rake.

Hence it would be obvious that using the Fyffe et al., rake to travel across a surface of the particulate matter, such that particulate matter is sifted according to particle size.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the rake of Fyffe et al., according to the method of Burrell, such that the rake is caused to travel across a surface of the particulate matter, in order to accurately grade fine particulate matter, with a minimum of exertion. See Burrell col. 3, Ins. 25-64; Fyffe et al. Figs. 1-6.

In regards to Claim 38 Burrell discloses the tines (16) can be truncated with an end plate (18/34) that has a truncated grading surface, parallel with the truncated end surfaces (20) of the tines, that forms either a parallel angle with the handle, or a perpendicular angle with the handle, depending on the intended use of the grading rake. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the method of providing a grading rake of Insalaco, with the method of step of providing a grading surface parallel to the handle of the rake, as taught by Burrell, in order to provide a grading rake able to grade grain, gravel and other particulates, as taught by Burrell. See col. 3, lines 25-58.

Response to Arguments

9. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with respect to claims 13-39 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The Applicant's amendment canceled claims 1-12 and provided New Claims 13-39, which require truncated time ends as opposed to tapered time ends, as originally

claimed. Thereby necessitating a new search of the prior art and a New Grounds of Rejection.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lind # d209660 discloses a rake with angled tines. Lee, Jr. D427,495 discloses a lawn and garden weeder. Mader D146,226 discloses a wheel hoe. Insalaco d246,153 discloses a contoured grading rake.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (703) 305-0135. The examiner can normally be reached on Monday-Friday from 8:00 am to 2:00 pm, 6-8 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 308-8623.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.


Thomas B. Will
Supervisor, Patent Examiner
Group 3600

RWA
6/5/2003